

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**OBJECTIONS TO SPECIAL MASTER
RULINGS ON APPLE INC.'S
PRODUCTIONS OF RE-REVIEWED
PRIVILEGE DOCUMENTS**

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the "Protocol"), Apple respectfully submits the following Objections to certain of the Special Masters' rulings on Apple's fourth production of re-reviewed and privileged documents produced on January 14, 2025. We are submitting these documents for *in-camera* review contemporaneously with this filing.

Apple's objections relate only to documents Apple believes are not already covered by Your Honor's and Judge Gonzalez Rogers' existing rulings on Apple's privilege assertions in this post-judgment discovery. As previously noted, *see* Dkt. 1109, Apple reserves all rights as to documents affected by those rulings, including any post-judgment appellate rights.

Entry Nos. 1808, 1809, and 1815 on the January 14, 2025 Privilege Log

Entry Nos. 1808 (PRIV-APL-EG_00142704) and **1809 (PRIV-APL-EG_00142710)** are draft documents attached to a parent email (PRIV-APL-EG_00142702). Entry No. 1808 is a document drafted by attorneys titled “External Link Account Entitlement Addendum for Reader Apps.” This is a draft addendum to the Developer Program License Agreement—the contract that all iOS developers enter into with Apple. Entry No. 1809 is a draft version of the developer support page associated with the reader app entitlement program. The parent document (PRIV-APL-EG_00142702) is an email from Ling Lew to a number of Apple employees describing changes that were made to the attached draft documents. Lew notes that the specific changes made to the document are highlighted in the attachment (**PRIV-APL-EG_00142710**).

Special Master Walsh deemed the email properly redacted for privilege, because it contains legal advice from in-house counsel. The legal advice conveyed in this email is directly reflected in both Entry Nos. 1808 and 1809, and in the case of Entry No. 1809, the changes implemented by Lew are highlighted for the reviewer’s attention. “Drafting legal documents is a core activity of lawyers, and obtaining information and feedback from clients is a necessary part of the process.” *Diversey U.S. Holdings, Inc. v. Sara Lee Corp.*, 1994 WL 71462, at *1 (N.D. Ill. Mar. 3, 1994); *see also Se. Pa. Transp. Auth. v. Carmarkpcs Health, L.P.*, 254 F.R.D. 253, 258 (E.D. Pa. 2008) (“Preliminary drafts of contracts are generally protected by attorney/client privilege, since they reflect not only client confidences, but also legal advice and opinions of attorneys, all of which is protected by the attorney/client privilege.” (cleaned up)); *Barnes-Wallace v. City of San Diego*, 2002 WL 35646619, at *4 (S.D. Cal. Dec. 5, 2002) (“As a general rule, preliminary drafts of documents are protected by the attorney-client privilege.”). As both of these documents are working drafts containing legal advice that are being sent to a client for consideration, they both constitute privileged attorney-client communications and should be withheld.

Entry No. 1815 (PRIV-APL-EG_00142725) is another version of Entry No. 1808, drafted by attorneys and entitled “External Link Account Entitlement Addendum for Reader Apps.” This draft contract was attached to an email, Entry No. 1814 (PRIV-APL-EG_00142722), from Ling Lew to a number of Apple employees in which she describes a number of changes made to Entry No. 1815, the entitlement addendum, and related support page (PRIV-APL-EG_00142724). Special Master Walsh similarly deemed this email properly redacted for privilege because it contains legal advice from in-house counsel. The legal advice conveyed in this email is directly reflected in Entry No. 1815. As noted above, drafts of contracts generally are protected by the privilege. *See Se. Pa. Transp. Auth.*, 254 F.R.D. at 258; *Barnes-Wallace*, 2002 WL 35646619, at *4. As this document is a working draft containing legal advice that is being sent to a client for consideration, it constitutes a privileged attorney-client communication and should be withheld.

Entry Nos. 1973, 1974, 1975 and 1976 on the January 14, 2025 Privilege Log

Entry Nos. 1973 (PRIV-APL-EG_00144536), 1974 (PRIV-APL-EG_00144537), 1975 (PRIV-APL-EG_00144538), and 1976 (PRIV-APL-EG_00144539) are screenshots reflecting changes made to two draft documents, one titled “StoreKit External Entitlements” and the other titled “StoreKit External Purchase Entitlement for apps in South Korea,” which are prompts for developers to review and accept the terms of certain developer agreements. All four images are attached to an email (PRIV-APL-EG_00144533) from a non-lawyer to Sean Cameron (in-house counsel) for his review and approval. Earlier emails in the thread indicate that Ling Lew (in-house counsel) reviewed and signed-off on the full versions of the draft documents, and urged the team to have Mr. Cameron weigh in before moving forward. This email thread indicates that Entry Nos. 1973, 1974, 1975, and 1976 were sent to one of Apple’s in-house counsel explicitly for his review and feedback. As such, the images constitute information provided to counsel for the purpose of obtaining legal advice and should be withheld as privileged attorney-client communications. *See In re Grand Jury Investigation*, 974 F.2d 1068, 1070 (9th Cir. 1992) (“The attorney-client privilege protects confidential disclosures made by a client to an attorney in order to obtain legal advice” (cleaned up)); *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 329 F.R.D. 656, 662 (D. Or. 2019) (“A draft prepared at the request of counsel or otherwise prepared by [a non-lawyer] and sent to counsel for review and legal advice is subject to the attorney-client privilege.”).

DATED: January 31, 2025

WEIL, GOTSHAL & MANGES LLP
By: /s/ Mark A. Perry
Counsel for Defendant Apple Inc.